TERRY BURL FRYREAR

IBLA 80-174 Decided September 24, 1981

Appeal from decision of the Nevada State Office, Bureau of Land Management, rejecting Indian allotment application N-25340.

Affirmed.

1. Classification and Multiple Use Act of 1964--Indian Allotments on Public Domain: Lands Subject to--Public Records--Segregation

   Publication in the Federal Register of a classification for multiple use management pursuant to 43 CFR 2461.2 will segregate the affected lands to the extent indicated in the notice, and subsequent Indian allotment applications for such lands must be rejected.

2. Act of February 8, 1887--Indian Allotments on Public Domain: Lands Subject to

   Sec. 4 of the General Allotment Act of Feb. 8, 1887, authorizes the Secretary of the Interior to issue allotments to Indians where the Indians have made settlement upon public lands "not otherwise appropriated." An application for an Indian allotment is properly rejected when the lands included in the application are not available for settlement and disposition under the General Allotment Act because they have been segregated from appropriation under the public land laws on Sept. 5, 1969, when the "Notice of Classification of Public Lands for Multiple Use Management" was published in the Federal Register.

APPEARANCES: Terry Burl Fryrear, pro se.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

Terry Burl Fryrear appeals from a decision of the Nevada State Office, Bureau of Land Management (BLM), dated November 19, 1979, rejecting his Indian allotment application N-25340 filed for public lands in Clark County, Nevada, pursuant to section 4 of the General Allotment Act of February 8, 1887, 25 U.S.C. § 334 (1976). This section provides in pertinent part:

Where any Indian not residing upon a reservation, or for whose tribe no reservation has been provided by treaty, Act of congress, or executive order, shall make settlement upon any surveyed or unsurveyed lands of the United States not otherwise appropriated, he or she shall be entitled, upon application to the local land office for the district in which the lands are located, to have the same allotted to him or her, and to his or her children, in quantities and manner as provided in * * * [other sections of the Act].

On July 13, 1979, appellant filed his application (N-25340) for 160 acres of land located in the NW 1/4 sec. 18, T. 23 S., R. 62 E., Mount Diablo meridian, under the same Act.

On November 19, 1979, BLM rejected appellant's application because the lands requested in the application were within an area that had been classified for retention in Federal ownership. BLM explained that the classification segregates the land from appropriation under the agricultural land laws.

In his statement of reasons appellant contends: "The Agricultural Land Laws Can Not Supersede the Allotment Claims of Indians. 'SEE Title 25 U.S.C.-334[;] SEE 43 CFR 2212 Part 3[;] SEE Choats v. Trapp 224 U.S. 413 (1912)[; 1/] SEE U.S.C.A. Const. Amend. 5.'"

The file contains a copy of a "Notice of Classification of Public Lands for Multiple Use Management" dated August 14, 1969, which, in pertinent part, reads as follows:

1. Pursuant to the Act of September 19, 1964 (43 U.S.C. 1411-18) and to the regulations in 43 CFR Parts 2410 and 2411, the public lands within the area described below are hereby classified for multiple-use management. Publication of this notice has the effect of segregating the described lands from appropriation only under the agricultural land laws (43 U.S.C. Pts. 7 and 19; 25 U.S.C. sec. 334) and from sales under section 2455 of the Revised Statutes (43 U.S.C. 1171) and lands shall remain open to all other applicable forms of appropriation,

---

1/ We note that the Indian allotment case at 224 U.S. 413 is Heckman v. United States. Choate v. Trapp appears at 224 U.S. 665.

> including the mining and mineral leasing laws, with the exception contained in paragraph 3. As used herein, "public lands" means any lands withdrawn or reserved by Executive Order No. 6910 of November 26, 1934, as amended, or within a grazing district established pursuant to the Act of June 28, 1934 (48 Stat. 1269), as amended, which are not otherwise withdrawn or reserved for Federal use or purpose.

2. The record showing the comments received following publication of a notice of proposed classification (34 F.R. 16, 24), or at the public hearing at the North Las Vegas City Hall, North Las Vegas, Nev., which was held on March 5, 1969, and other information is on file and can be examined at the Nevada Land Office. The public lands affected by this classification are located within the following described area and are shown on maps designated N-1575 in the Las Vegas District Office, Bureau of Land Management, 1859 North Decatur Boulevard, Las Vegas, Nev. 89108, and the Nevada Land Office, Bureau of Land Management Room 3104, Federal Building, 300 Booth Street, Reno, Nev. 89502.

The overall description of the area is as follows:

CLARK COUNTY

MOUNT DIABLO MERIDIAN, NEVADA

The public lands classified are wholly located within Clark County, Nev.

The area described aggregates approximately 2,074,900 acres. [Emphasis supplied.]

* * * * * * * *

The file also contains a copy of the pertinent portion of map N-1575 depicting the lands sought in the application as classified for multiple use management.

[1] Publication in the Federal Register of a notice of classification pursuant to the Classification and Multiple Use Act of 1964, 43 U.S.C. §§ 1411-1413 (1976), and the regulations in 43 CFR Subparts 2410 and 2411, will segregate the affected land to the extent indicated in the notice. Robert Dale Marston, 51 IBLA 115 (1980); United States v. Rodgers, 32 IBLA 77 (1977). Publication in the Federal Register of a notice of a classification under the Classification and Multiple Use Act will segregate the lands described from other forms of disposal unless the classification provides specifically that the lands shall remain open for certain forms of disposal. Robert Dale Marston, supra; H. E. Baldwin, 3 IBLA 71 (1971). The notice, published September 5, 1969, segregated the lands described from disposal under the agricultural land laws, including 25 U.S.C. § 334 (1976). The applicant does not show that he occupies the land or has placed improvements upon it. There is no evidence the applicant has made "settlement" as required by the Act prior to the time the land was no longer available for entry.

[2] Section 4 of the Act of February 8, 1887, supra, authorizes the Secretary of the Interior to issue allotments to Indians, in certain instances, where the Indians have made settlement upon public lands "not otherwise appropriated." Pamela June Wood Finch, 49 IBLA 325 (1980); Thurman Banks 22 IBLA 205 (1975). In the present case, the lands were "appropriated" when they were segregated under the order published in the Federal Register on September 5, 1969. Furthermore, there is no evidence that appellant made "settlement" as required by the Act. His application shows that he neither occupies the land nor has placed improvements on it.

Appellant's application was filed in July 1979, years after the segregation of the land in issue. An application for an Indian allotment is properly rejected when the lands included in the application are not available for settlement and disposition under the General Allotment Act at the time the application is filed. Pamela June Wood Finch, supra; Thurman Banks, supra.

The authority cited by appellant is not in point because the instant case involves land which was segregated from entry at the time appellant's application was filed. The regulation cited, 43 CFR 2212 (1978) deals with a miscellaneous state exchanges.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Anne Poindexter Lewis
Administrative Judge

We concur:

Edward W. Stuebing
Administrative Judge

Gail M. Frazier
Administrative Judge.